

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BET 04P0216	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/FR2004/000896	International filing date (day/month/year) 09.04.2004	Priority date (day/month/year) 11.04.2003	
International Patent Classification (IPC) or national classification and IPC			
Applicant CHRYSO			

<ol style="list-style-type: none"> 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of <u>7</u> sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: <ol style="list-style-type: none"> a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>5</u> sheets, as follows: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). 																								
<ol style="list-style-type: none"> 4. This report contains indications relating to the following items: <table border="0"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> 	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

- international search (Rule 12.3 and 23.1(b))
- publication of the international application (Rule 12.4)
- international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

the international application as originally filed/furnished
 the description:

pages 1 - 7, 9 - 14 as originally filed/furnished

pages* 8 received by this Authority on 04.01.2005 with letter
of 28.12.2004

pages* _____ received by this Authority on _____

the claims:

nos. _____ as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19

nos.* 1 - 15 received by this Authority on 04.01.2005 with letter
of 28.12.2004

nos.* _____ received by this Authority on _____

the drawings:

sheets _____ as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____

a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. The amendments have resulted in the cancellation of:

- the description, pages _____
- the claims, nos. _____
- the drawings, sheets/figs _____
- the sequence listing (*specify*): _____
- any table(s) related to sequence listing (*specify*): _____

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages _____
- the claims, nos. _____
- the drawings, sheets/figs _____
- the sequence listing (*specify*): _____
- any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	International application No. PCT/FR2004/000896
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1. Statement	Novelty (N) Claims <u>3, 8, 10, 11</u> YES <u>1, 2, 4-7, 9, 12-15</u> NO	
Inventive step (IS)	Claims _____ YES Claims <u>3, 8, 10, 11</u> NO	
Industrial applicability (IA)	Claims <u>1-15</u> YES Claims _____ NO	
2. Citations and explanations (Rule 70.7)		
1. Reference is made to the following documents:		
<p style="margin-left: 20px;">D1: FR-A-2 776 285 (CHRYSO) 24 September 1999</p> <p style="margin-left: 20px;">D2: EP-A-1 260 535 (BASF AG) 27 November 2002</p> <p style="margin-left: 20px;">D3: EP-A-1 136 508 (SIKA AG) 26 September 2001</p> <p style="margin-left: 20px;">D4: EP-A-1 136 507 (SIKA AG) 26 September 2001</p> <p style="margin-left: 20px;">D5: EP-A-0 792 850 (NIPPON CATALYTIC CHEM IND) 3 September 1997</p> <p style="margin-left: 20px;">D6: EP-A-1 260 536 (BASF AG) 27 November 2002</p>		
2. The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claims 1, 2, 4 to 7, 9 and 12 to 15 does not meet the requirement of novelty defined in PCT Article 33(2).		
2.1 Document D1 describes (the reference signs between parentheses apply to this document):		
<p style="margin-left: 20px;">A fresh concrete composition having a slump value T₀ of 19 cm and including 0.53 wt % of a polycarboxylate-type dispersing agent containing 100 % by number of a linear concatenation of units</p>		

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement

derived from acrylic acid and a polyethylene glycol methyl ether ($M_w = 750$ Dalton) (see page 20; table (I)). It follows that the subject matter of claim 15 is not novel.

2.2 Document D2 describes (the reference signs between parentheses apply to this document):

A polycarboxylate-type dispersing agent containing 100 % by number of a linear concatenation of units derived from acrylic acid and a polyethylene glycol methyl ether ($M_w = 1000$ Dalton) (see pages 6 to 7; esters 1-3). D2 also describes the use of said dispersing agents to maintain the fluidity of ready-to-use concrete compositions (paragraph [0007]). Given that adjusting slump to a desired value is a routine measure for a person skilled in the art to take (by selecting the amount of dispersing agent and/or the w:c ratio), the subject matter of claim 1 cannot be considered novel.

Furthermore, the esters of D2 fall within the scope of claims 2, 4 to 7 and 12 to 14, which thus also lack novelty over D2.

2.3 Documents D3 to D5 all describe dispersing agents containing (meth)acrylic acid with comonomers that include a short oxyalkylene chain. This is covered by the definition of the polycarboxylate of claims 1 and 15. D3 to D5 also describe the use of said dispersing agents for maintaining the fluidity of

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

ready-to-use concrete compositions (D3, paragraph [0002]; D4, paragraphs [0001] and [0005]; D5, page 2, lines 11-15). For reasons similar to those given above (see point 2.2 above), the subject matter of claim 1 likewise cannot be considered novel over documents D3 to D5.

D3 describes a polymer including acrylic acid, polyethylene glycol acrylic ester and polyethylene glycol methacrylic ester units (example 1). This is also covered by the definition of claim 9. It follows that the subject matter of claim 9 also lacks novelty.

3. Dependent claims 3, 8, 10 and 11 do not contain any features which, when combined with the features of any one of the claims to which they refer, might define subject matter that complies with the requirements of novelty and/or inventive step of the PCT, for the following reasons:

- The features in claim 8 have nevertheless already been used for the same purpose in D6 (example 1). It is obvious for a person skilled in the art to implement these features, with a corresponding effect, in the preparation of a polycarboxylate-type dispersing agent used in ready-to-use concrete compositions, according to document D2, and thus arrive at a dispersing agent according to claim 8.

- The features in claims 3, 10 and 11 merely

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Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

appear to be one of a plurality of obvious alternatives that a person skilled in the art might select when seeking to solve the stated problem, depending on each particular case, and without an inventive step being involved.

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Box I.

The amended claims filed with the letter of 28 December 2004 comply with the requirements of PCT Article 34(2) (b) and are thus the basis of the present opinion.